

DUNCAN MILLER

IBLA 70-71

Decided December 21, 1970

Oil and Gas Leases: First Qualified Applicant

A noncompetitive offer to lease for oil and gas is properly rejected where the land sought has been included in an oil and gas lease issued in response to a proper application filed earlier in time.

Oil and Gas Leases: Applications: Generally -- Res Judicata

An oil and gas lease offeror cannot raise as an objection to the rejection of a later offer the rejection of an earlier one which has been finally disposed of.

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: Riverside 06122
: Los Angeles 0171271

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: Oil and gas lease
: offer rejected

: Affirmed

DECISION

Duncan Miller has appealed to the Secretary of the Interior from a decision dated July 11, 1969, of the Office of Appeals and Hearings, Bureau of Land Management, which affirmed the rejection by the Riverside land and district office of his noncompetitive oil and gas lease offer Riverside 06122 on the ground that the land it described was included within a prior oil and gas lease offer, Los Angeles 0171271, on which a lease was issued for some land on June 1, 1965, and for the rest on June 4, 1968.

As the Bureau of Land Management decision pointed out, Miller's appeal to the Director consisted only of a vague allegation that he had been denied the statutory right of the first qualified applicant. It then noted that LA 0171271 was filed on October 9, 1961, while Riverside 06122 was filed on December 24, 1964. LA 0171271 plainly was a prior offer.

The Bureau then reviewed the history of an earlier Miller offer for the same land, LA 0170834, which had been rejected as not a proper application by the Department. Duncan Miller, A-29521 (August 29, 1963), aff'd, Miller v. Udall, Civil No. 2413-63 (D. D.C., October 2, 1967).

In his present appeal Miller attempts to reargue the validity of his earlier offer. That issue, of course, has been finally settled adversely to him.

He also raises for the first time in this proceeding the contention that lease LA 0171271 should not have been issued until his offer LA 0170834 had been finally adjudicated. Apparently he has reference to the regulation which provides that no lease shall be issued before final action has been taken on any prior offer to lease the same land. 43 CFR 3110.1-6, 35 F.R. 9689 (formerly 43 CFR 3123.7). Even assuming that that lease was issued prematurely, the regulation requires its cancellation only if the senior offeror is found to be entitled to receive a lease. Since Miller's offer has been rejected, there is no reason to take any action against lease LA 0171271. Furthermore, a review of the records shows that the lease was not issued for land covered by LA 0170834 until it had been finally disposed of.

Accordingly, Miller's offer, Riverside 06122, was properly rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081) the decision of the Office of Appeals and Hearings, Bureau of Land Management, is affirmed.

Martin Ritvo, Member

I concur:

I concur:

Newton Frishberg, Chairman

Anne Poindexter Lewis, Member

